THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.20768 OF 2005

Dated 25st October 2005

Between:

P.Subhashan S/o.Somaiah & another

…Petitioners

And

The Principal Junior Civil Judge, Sanga Reddy & another

…Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO.20768 OF 2005

O R D E R:

The second respondent society filed O.S.No.400 of 2003, in the Court of Principal Junior Civil Judge, Sanga Reddy, against the petitioners, for the relief of perpetual injunction. It also filed an application, under Order 39 Rule 1 C.P.C., and an order of temporary injunction was initially granted on 14.10.2003. The same was made absolute on 8.01.2004. In this writ petition, the petitioners challenge the very registration of the suit, by the trial court.

Sri P.Prabhakar Reddy, learned counsel for the petitioners, submits that admittedly, the petitioners are members of the second respondent, and that any dispute between the members *inter se,* was required to be settled, or got adjudicated, as provided for under Section 23 of the Andhra Pradesh Societies

Registration Act, 2001, for short “the Act”. He contends that when Section 23 of the Act provides for arbitration or filing of an O.P. before the Principal District Court, there was no justification for the second respondent, in filing the present suit, or for the trial court, in entertaining it.

Sri P.Venkat Reddy, learned counsel for the second respondent, on the other hand, submits that the petitioners raised these very objections in the written statement in the suit, and the counter affidavit to the I.A., and the trial court made the order of temporary injunction absolute, only after considering the same. He contends that the petitioners filed C.R.P.No.4706 of 2004, assailing the order in I.A.No.1338 of 2004, by raising a specific plea as to the maintainability of the suit, and that this court had rejected the same, through its order dated 3.12.2004. He contends that it is not permissible for the petitioners to raise the same question, once again.

It is true that Section 23 of the Act provides for settlement of disputes between the members of the societies, registered under the Act, either by taking recourse to the arbitration, under the Arbitration and Conciliation Act, 1996, or by adjudication by the concerned District Court. In fact, the second respondent filed O.P.No.456 of 2004, in the Court of Principal District Judge, Ranga Reddy, wherein the petitioners as well as certain others are impleaded as parties. However, the fact remains that the petitioners raised the plea as to the maintainability of O.S.No.400 of 2003, before this Court in C.R.P.No.4706 of 2004, and the same was rejected. It was left open to the petitioners to agitate the same, as a preliminary issue, before the trial court. The petitioners did not pursue that course. Once the order in the C.R.P. has become final, it is impermissible for the petitioners, to raise the same ground or plea, by filing a writ petition.

The suit is said to be in an advanced stage and that the second respondent has filed an affidavit in lieu of examination in chief. The petitioners have to cross-examine him and adduce their evidence. The trial court can be required to dispose of the suit itself, at the earliest.

Hence, the writ petition is disposed of, directing that the trial court shall conclude the trial and dispose of the suit, by the end of December 2005. There shall be no order as to costs.

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25th October 2005

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